

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Land Division
Honolulu, Hawaii 96813

November 19, 2009

Board of Land and Natural Resources
State of Hawaii
Honolulu, Hawaii

PSF No.: 09HD-119

HAWAII

Grant of Perpetual, Non-Exclusive Easement to Joseph F. Pickering, as Trustee under that certain unrecorded Joseph F. Pickering 1994 Qualified Personal Residence Trust, dated April 7, 1994 and Joseph F. Pickering, as Trustee under that certain unrecorded Helen D. Pickering 1994 Qualified Personal Residence Trust, dated April 7, 1994, for Utility Purposes, Puako, Lalamilo, South Kohala, Hawaii, Tax Map Key: 3rd/ 6-9-02: 9.

APPLICANT:

Joseph F. Pickering, as Trustee under that certain unrecorded Joseph F. Pickering 1994 Qualified Personal Residence Trust, dated April 7, 1994 and Joseph F. Pickering, as Trustee under that certain unrecorded Helen D. Pickering 1994 Qualified Personal residence Trust, dated April 7, 1994, Tenants in Common.

LEGAL REFERENCE:

Section 171-13, Hawaii Revised Statutes, as amended.

LOCATION:

Government Lands of Puako at Lalamilo, South Kohala, Hawaii, Tax Map Key: 3rd/ 6-9-02: 9, as shown on the attached map labeled **Exhibit A**.

AREA:

To be determined by independent survey, subject to review and verification by the Department of Accounting and General Services, Survey Division.

ZONING:

State Land Use District:	Urban
County of Hawaii CZO:	Open; also within SMA

TRUST LAND STATUS:

Section 5(b) lands of the Hawaii Admission Act

DHHL 30% entitlement lands pursuant to the Hawaii State Constitution:

YES ____ NO x

CURRENT USE STATUS:

Encumbered by Revocable Permit No. S-4350 to the Hoku Loa Church Foundation, for historical church site.

Grant of Easement No. S-4858, to Joseph and Helen Pickering, for vehicular and pedestrian ingress and egress.

CHARACTER OF USE:

Right, privilege and authority to construct, use, maintain, repair, replace and remove telecommunication/ electrical transmission lines, poles, guy wires, anchors, water meter and water transmission pipeline over, under and across State-owned land.

COMMENCEMENT DATE:

To be determined by the Chairperson.

CONSIDERATION:

One-time payment to be determined by independent or staff appraisal establishing fair market rent, subject to review and approval by the Chairperson.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

In accordance with the "Division of Land Management's Environmental Impact Statement Exemption List", approved by the Environmental Council and dated April 28, 1986, the subject request is exempt from the preparation of an environmental assessment pursuant to Exemption Class No. 1, that states "Operations, repairs or maintenance of existing structures, facilities, equipment or topographical features, involving negligible or no expansion or change of use beyond that previously existing."

Both the existing water pipeline and overhead electrical transmission line have been in existence since the 1950's, which predates the enactment of the land use and environmental laws.

DCCA VERIFICATION:

Not applicable. As trusts, the Applicants are not required to register with the Department of

Commerce and Consumer Affairs.

APPLICANT REQUIREMENTS:

Applicant shall be required to:

- 1) Pay for an appraisal to determine initial one-time payment;
- 2) Provide survey maps and descriptions according to State DAGS standards and at Applicant's own cost;
- 3) Obtain from the County of Hawaii Planning Department a SMA permit (if required), or an exemption for any improvements to the water pipeline.

REMARKS:

The subject parcel situated at Puako, Lalamilo, South Kohala, designated as TMK: 3rd/ 6-9-02: 9 (the "church lot") that is currently encumbered by Revocable Permit No. S-4350 to the Hoku Loa Church Foundation (HLCF) is the site of the historic Hokuloa Church. On the makai side of the church lot is a landlocked shorefront parcel designated as TMK: 3rd/ 6-9-02: 11 (the "Pickering lot"), presently owned by Joseph F. Pickering, as Trustee of the Joseph F. Pickering 1994 Qualified Personal Residence Trust, dated April 7, 1994 and Joseph F. Pickering, as Trustee of the Helen D. Pickering 1994 Qualified Personal Residence Trust, dated April 7, 1994.

Historically, access to the Pickering lot was over the church lot in generally the same location as the existing traveled way. At its meeting of April 10, 1981, Item F-2, the Board of Land and Natural Resources approved a 65-year non-exclusive easement to Joseph F. Pickering and Helen D. Pickering for vehicular and pedestrian ingress and egress.

Also traversing the church lot, but not within the access easement alignment is an existing water meter and pipeline, electric pole and overhead electrical transmission line on the church lot, which services the Pickering's lot. There are no records on file indicating that the Board of Land and Natural Resources approved an easement in favor of the Pickerings or their predecessors-in-interest for the water meter and pipeline installed sometime in the 1950's.

The Pickerings indicated to staff that they were willing to explore the option of moving the water line into the approved access easement, which is east of the traveled way. However, the Pickerings report that the Shoreline Management Division of the County Planning Department is pessimistic that the Pickerings would get approval for an SMA permit to move the water line closer to the shore. The Planning Department explained to the Pickerings that the current "grandfathered" water line is already in existence and is located further from the shore, and therefore a new location would not be considered "necessary". The Planning Department advised the Pickerings to ask the Board of Land and Natural Resources for a

utility easement in the corridor where it is currently located.

The Pickerings state that they would like to avoid any future disruption of their water supply as well as any potential for dispute with Hawaii Conference Foundation, which is the successor to HLCF. At the suggestion of the Planning Department, and after researching the matter with the County Department of Water Supply and the Plumbing Permit Division of the County Department of Public Works, the Pickerings were advised to replace the existing line in its current location but at a depth of at least 18 inches and then to top fill with "#4 sand". These measures should help protect the line from breakage due to vehicular traffic crossing the water pipeline.

The Hawaii Electric Light Company was also consulted and indicated that it recommends an easement width of at least ten (10) feet to allow sufficient space to conduct its work activities, should the need arise.

Staff believes that the Pickerings' proposal for an easement for the water line is reasonable provided that (i) the water line is buried deeper as described above and then to top fill with "#4 sand", and (ii) the Pickerings agree to indemnify and hold the State and any tenant of the State occupying the church lot harmless from any claims arising from the damage of the water line in the easement corridor.

Staff is recommending that the easement run with the land under the standard conditions approved by the Department of the Attorney General. Those conditions include the requirement that the assignor notify the assignee of the insurance requirement in writing, separate and apart from the easement document.

Applicant has not had a lease, permit, easement or other disposition of State lands terminated within the last five years due to non-compliance with such terms and conditions.

Various governmental agencies and interest groups were solicited for comments. To date, all respondents indicated that they had no objections to the granting of the easement.

AGENCY	COMMENTS
County of Hawaii:	
Fire Department	No response
Planning	No response
Police Department	No comments
Public Works	See comments below
Water Supply	No objections
State of Hawaii:	
DLNR- Historic Preservation	No response
Other Agencies/ Interest Groups:	
Office of Hawaiian Affairs	No response
Hoku Loa Church	No objections

The County of Hawaii, Department of Public Works had no objections to the granting of the easement, but provided the following comments. "If the consumer line (from water meter to the residence) is to be re-buried, a Plumbing Permit should be obtained from the Building Division of the Department of Public Works. Based on the most recent Plumbing Code Addendum, the minimum depth of bury for the consumer line is six inches."


The subject property is encumbered under Revocable Permit No. S-4350 to HLCF. The church has been included in all discussions and is in concurrence to the proposal of granting the utility easement.

RECOMMENDATION: That the Board:

1. Declare that, after considering the potential effects of the proposed disposition as provided by Chapter 343, HRS, and Chapter 11-200, HAR, this project will probably have minimal or no significant effect on the environment and is therefore exempt from the preparation of an environmental assessment.
2. Authorize the subject requests to be applicable in the event of a change in the ownership of the abutting parcel described as Tax Map Key: 3rd/ 6-9-03: 11, provided the succeeding owner has not had a lease, permit, easement or other disposition of State lands terminated within the last five (5) years due to non-compliance with such terms and conditions.
3. Subject to the Applicant fulfilling all of the Applicant requirements listed above, authorize the issuance of a perpetual non-exclusive easement to Joseph F. Pickering, as Trustee under that certain unrecorded Joseph F. Pickering 1994 Qualified Personal Residence Trust, dated April 7, 1994 and Joseph F. Pickering, as Trustee under that certain unrecorded Helen D. Pickering 1994 Qualified Personal Residence Trust, dated April 7, 1994, covering the subject area for utility purposes under the terms and conditions cited above, which are by this reference incorporated herein and further subject to the following:
 - A. The standard terms and conditions of the most current perpetual utility easement document form, as may be amended from time to time;
 - B. The easement shall run with the land and shall inure to the benefit of the real property described as Tax Map Key: 3rd/ 6-9-03: 11, provided however: (1) it is specifically understood and agreed that the easement shall immediately cease to run with the land upon the termination or abandonment of the easement; and (2) if and when the easement is sold, assigned, conveyed, or otherwise transferred, the Grantee shall notify the Grantee's successors or assigns of the insurance requirement in writing, separate and apart from this easement document.

- C. That the Pickerings shall: (1) at their own cost, modify, repair, and replace the existing water pipeline consistent with the recommendations of the Department of Water Supply for private water lines, which may include burying the water line at least 18 inches below ground level and filling the trench with #4 sand to eliminate risk of pipeline damage due to vehicular crossings; (2) restore the traveled way to its original or better condition as that prior to the commencement of the work activities; (3) after the re-installation of the water line, to allow HCF to erect fencing over the utility easement corridor, if HCF determines fencing is necessary for church liability purposes; and (4) agree to indemnify and hold the State and any tenant of the State occupying the church lot harmless from any claims arising from the unintentional damage of the water line in the easement corridor.
- D. Should the water pipeline, overhead electrical line, and/or electrical pole require repairs, removal or replacement, the Pickerings shall, prior to commencement of any planned work activity: 1) obtain all necessary permits required and relating to the work to be done, and 2) provide the tenant of the church lot 30-days notice in advance, except in unexpected emergency situations.
- E. Review and approval by the Department of the Attorney General; and
- F. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully Submitted,



Wesley T. Matsunaga
Land Agent

APPROVED FOR SUBMITTAL:



Laura H. Thielen, Chairperson

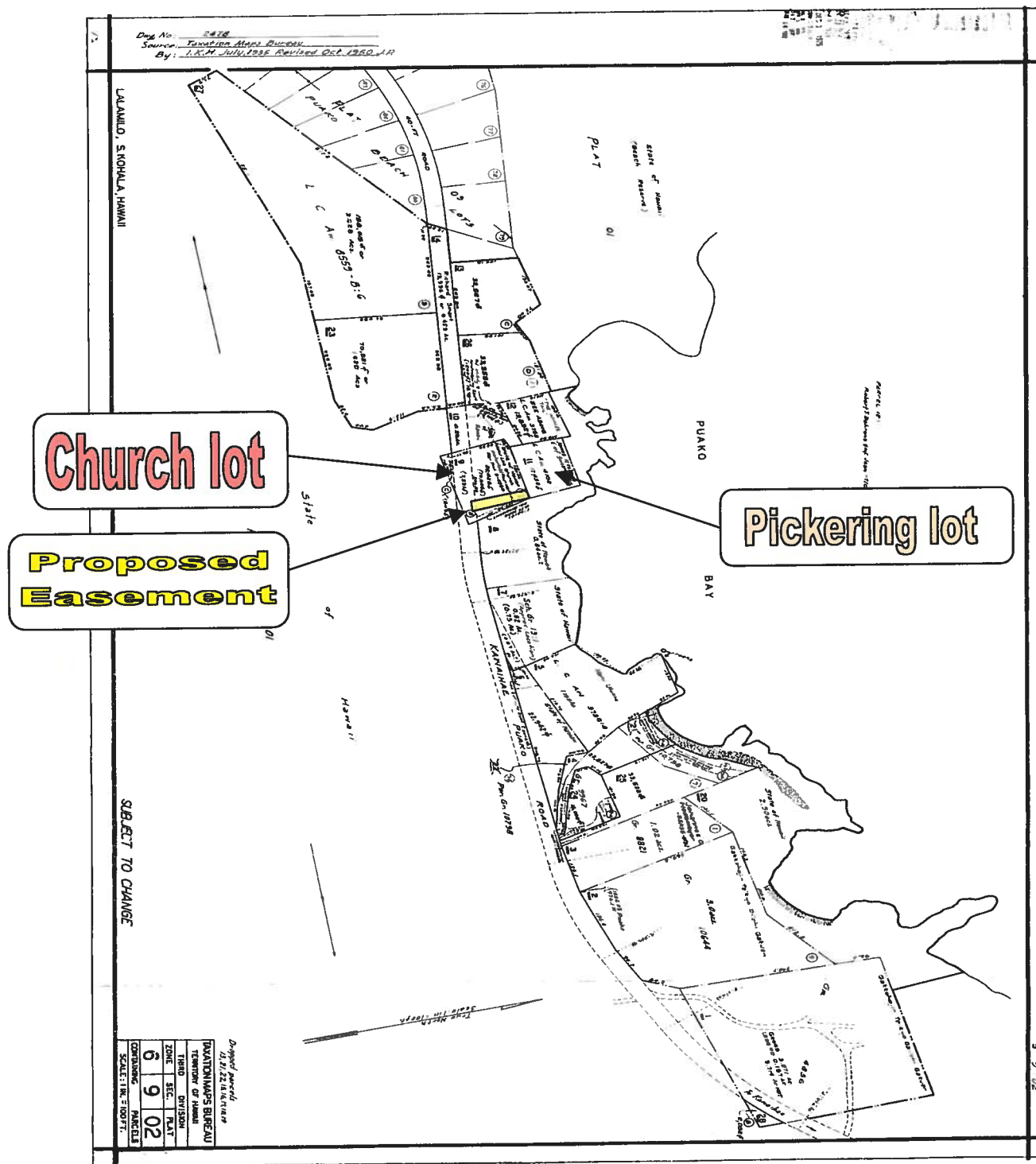


EXHIBIT A



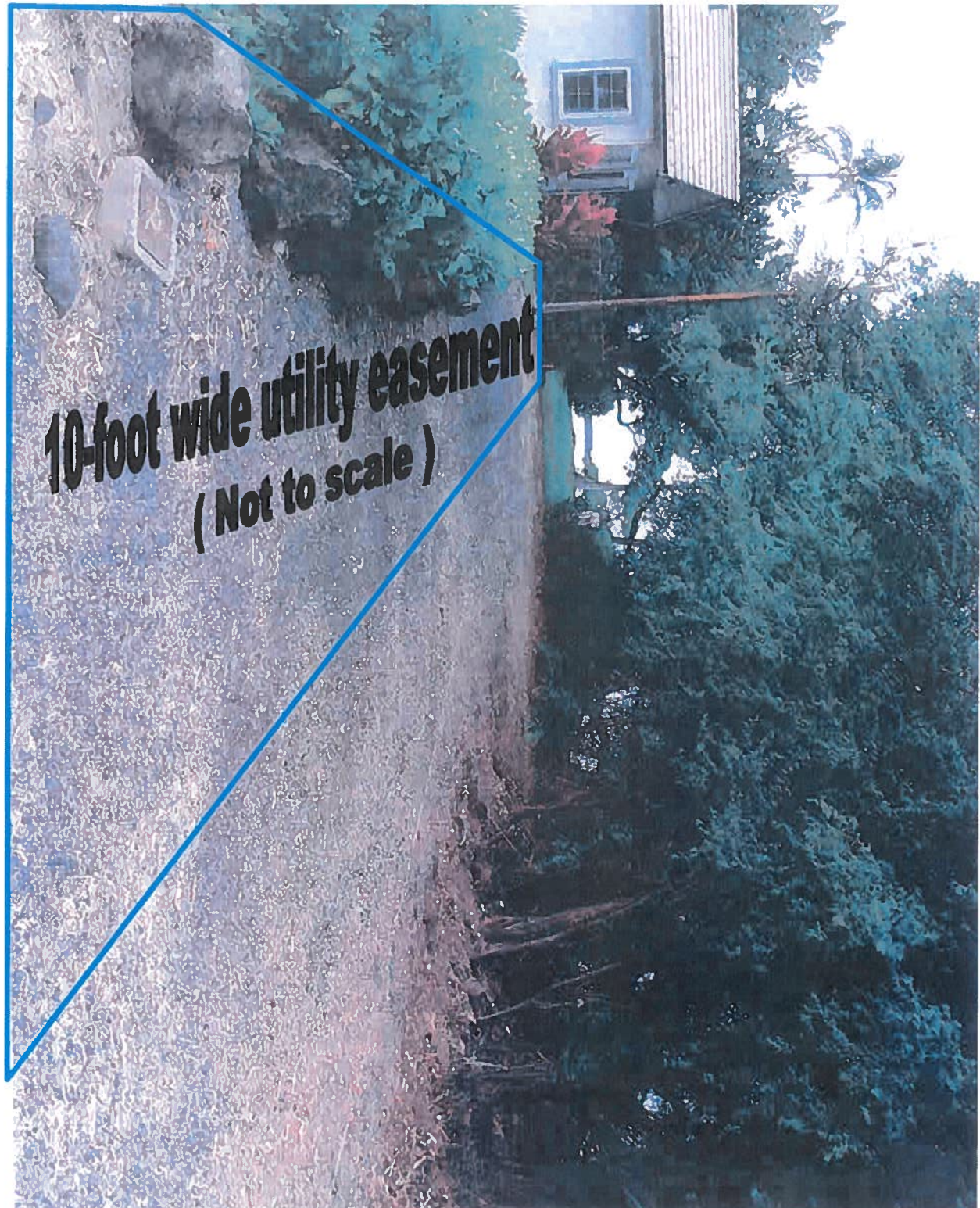


EXHIBIT B